

Supreme Court, U.S.
FILED

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No. 08-1238

In The

Supreme Court of the United States

YURI J. STOYANOV,

Petitioner

v.

DONALD C. WINTER,

SECRETARY OF THE NAVY; ET. AL.,

Respondents.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

RESPONSE TO BRIEF
FOR THE RESPONDENTS IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner seeks decision to vacate the appeals court decision, which did not address any issue raised by Petitioner, but sanctioned wrong district court opinions that conflict and so far depart from this Court's decisions and decisions of the appeals courts as to call for an exercise of this Court's supervisory power. The conflicting and wrong reasons stated in the district court opinion and the appeals court decision present the following questions:

1. Whether Petitioner could establish a *prima facie* case of age discrimination based upon promotion selections?
2. Whether presenting evidence of disparate treatment and a pattern or practice of intentional discrimination because of age and retaliations for protected activities in addition to refuting Defendants' contentions are sufficient to defeat summary judgment?
3. Whether Petitioner provided sufficient evidence to establish pretext to defeat summary judgment?

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PETITIONER'S RESPONSE TO RESPONDENTS' OPPOSITION

Petitioner Dr. Yuri Stoyanov responds to the Brief For The Respondents In Opposition to the Petitioner's writ of certiorari for the Court's consideration and decision to vacate the appeals court decision, which sanctioned a decision by a lower court that conflicts and so far departs from this Courts' decisions as to call for an exercise of this Court's supervisory power. The Respondents' Opposition failed to produce any relevant evidence to oppose the petition for a writ of certiorari and the Court's decision to grant the petition and vacate the appeals court decision, which did not address any issue raised by Petitioner, but sanctioned wrong and erroneous reasons stated in the district court opinion that call for an exercise of this Court's supervisory power.

The Respondents' Opposition proffered deceitful information and did not follow the Rule 24 (6.) that the "brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous mater" by presenting immaterial and misleading matter with respect to the petitioner's whistleblower claims, which were the subject of Defendants' retaliations and violations of the Whistleblower Protection Act (WPA) subsequent to the matters raised in the Petitioner's Complaint related to the Defendants' prohibited actions occurring between Spring 2002 and Winter 2002. The Respondents' immaterial matter and misleading statement were in the Respondents' Opposition at 2: "... After exhausting their administrative remedies, petitioner and his brother pursued the discrimination and retaliation claims in federal

district court and sought relief on the whistleblower claims before the Merit Systems Protection Board (MSPB)" (emphasis added), contrary to the evidence that Petitioner did not seek relief before the MSPB with regard to the whistleblower claims identified in the first case. The immaterial matter and misleading statements continued in the Respondents' Opposition at 3: "[w]ith respect to petitioner's whistleblower claims, the MSPB dismissed those claims for lack of jurisdiction" and violated Rule 24 (6.) because those claims were raised in 2005, and were different from the claims of retaliation for Whistleblowing activities¹ between Spring 2002 and Winter 2002.

AGE DISCRIMINATION IN PROMOTION SELECTIONS

Respondents continued quoting from the district court opinions that were irrelevant or immaterial to the writ of certiorari for the Court's decision to grant the petition and vacate the appeals court decision. Respondents improperly argued that the Petitioner's writ of certiorari for "an exercise of this Court's supervisory power to restore justice and

¹ Petitioner also repeatedly disclosed Defendants' violations of laws, abuse of authority, discrimination and retaliations through the chain of command including the commander of the Carderock Division and filed Complaint of Prohibited Personnel Practice with the Office of Special Counsel (OSC) after the agency officials retaliated and by fraud transferred Petitioner to a different technology department and further escalated violations of laws in the vicious circle of continuous discrimination and retaliations since April 2002. Petitioner exhausted administrative remedies available to him by choosing the EEO forum in 2002. See Pet. at 3. The other "whistleblower claims" raised in the MSPB forum as referred in the Respondents' Opposition at 3 were not part of the complaint considered by the district court and were raised in 2005 because no remedial measures had been taken by the agency in 2002. See S. Ct. Case No. 07-0024.

vacate the appeals court decision" was not to correct errors involving "the proper administration of judicial business" and "to prescribe the method by which [lower courts] go about deciding the cases before them" contrary to the compelling reasons to grant petition for a writ of certiorari stated and based on the relevant decisions of this Court and the accepted decisions of the appeals courts because the U.S. Court of Appeals for the Fourth Circuit did not address any issue raised by the Petitioner's appeal. In fact, Petitioner referred to *Reeves v. Sanderson Plumbing Products, Inc*, 530 U. S. 133, 140 (2000), where Court established what showing a plaintiff had to make regarding pretext in the age discrimination case and, specifically, whether a plaintiff could satisfy his burden by merely rebutting the defendant's explanation for the action. The appeals court ignored the age discrimination and retaliation claims, but sanctioned abuse of discretion and erroneous reasons stated in the district court opinion wrongly concluding "there is no basis in the record from which the court could infer that unlawful discrimination played a role in defendants' selection processes" in establishing the fourth element of the *prima facie* case for age discrimination and disparate treatment in promotion by ignoring clear evidence of age discrimination when significantly younger (by more than 9 years) selectee with inferior qualifications was promoted by manipulating selection process, committing fraud and deceptions to conceal a promotion opportunity and deny Petitioner promotion. The appeals court decision contradicted its own decisions, decisions of other appeals courts, and far departed from this Court's decisions as to call for an exercise of this Court's supervisory power to

restore justice and issue a decision in favor of the Petitioner because the appeals court sanctioned a decision by a lower court, which abused discretion and far departed from the accepted decisions of the appeals courts and this Court.

Specifically, Respondents misrepresented matter in the Respondents' Opposition arguing at 6 ¶2: "Notably, petitioner does not claim that the court relied on an erroneous legal standard, but rather that it erred in its assessment of petitioner's evidence, ..." contrary to the writ of certiorari identifying legal standards set by this Court and the decisions of the appeals courts. Thus, Petitioner clearly showed in the writ of certiorari at 7 that the lower court relied on erroneous legal standard, contradicted and far departed from the appeals court decision made in *Mauro v. Southern New England Telecomms., Inc.*, 208 F. 3d at 387 (2d Cir. 2000): "requiring the plaintiff to show that he or she applied for the specific jobs at issue would be unrealistic as an employee by definition cannot apply for a job that he or she does not know exists" when Defendants deceived or misled Petitioner about the VA CAR 02-0074 in an effort to conceal a promotion opportunity and to deny Petitioner promotion as part of continuous discrimination on bases of age, national origin and in reprisal for participation in protected activities.

In addition, Petitioner identified direct evidence of intentional discrimination, desperate treatment, and retaliation against Petitioner when Defendant Fowler provided information about the VA CAR-02-0074 to the 38-years old selectee while on the very same day on September 20, 2002, denied such timely information to the 47-years old

Petitioner by explicitly telling Petitioner “to request this type of information” from EEO office “since you have an ongoing EEO case” when the selectee and Petitioner requested information about the available vacancy announcements. See Exhibit (Ex.) 1 at E2. The direct evidence showed that Defendant Fowler was aware about the vacancy CAR-02-0074 on September 20, 2002; however, she intentionally denied vacancy announcement to Petitioner and did not post this vacancy until the day it closed on 9/24/02 in an effort to conceal a promotion opportunity from Petitioner and to cover up fraud with promotion, which was under a “name request” announcement for only one person to be on the certificate considered by the selecting official. In fact, Defendant Fowler already knew and admitted to Goldman that VA CAR-02-0074 was a name request vacancy “posted for reasons I can not will not go into at this time” and “Only one person will even be considered” in response to Goldman’s warning that “posting it like this may be worst than not posting it at all, and may lead to major whining”, “[t]his is the type of thing our employees constantly complain about” if “we don’t even go through the motions ...”. See Ex. 2 at E4-E5. The appeals court sanctioned a departure of the lower court from accepted decisions that was in conflict with the court’s own decision in *Williams v. Giant Food Inc*, 370 F.3d 423 (4th Cir. 2004), which reversed the district court’s summary judgment concluding that *Williams* created a genuine issue of material fact relevant to her failure-to-promote claims and can establish a *prima facie* case if she can show that she was unaware of the promotion opportunities because the company did not follow its own policy. Respondents’ deceptions,

intentional misrepresentations, and dishonesty should be interpreted as affirmative evidence of guilt; however, the district court opinions were in obvious conflict with the relevant decisions of this Court (*Reeves*, 530 U.S. at 149) and decisions of the appeals courts. The facts and arguments for an exercise of this Court's supervisory power and decision to vacate the appeals court decision were presented in the Petitioner's writ of certiorari, which should be granted.

DIRECT EVIDENCE OF DISCRIMINATION AND RETALIATIONS

Respondents continued to misrepresent matter in the Respondents' Opposition with regard to direct evidence of discrimination and retaliations arguing at 7: "petitioner relied on that very same email message in his first lawsuit, where he also claimed that the email was direct evidence of age discrimination" wrongly contending that "petitioner is precluded from arguing that the email is direct evidence of discrimination a second time around" by substituting the evidence with "a finality as to the claim or demand in controversy". Also, Respondents' argument that the district court in the first lawsuit held that the email did not constitute direct evidence of discrimination and the Fourth Circuit affirmed the dismissal was without merit because the unpublished opinions are not binding precedent in this circuit in addition to the evidence that the district court decisions were based not on facts and the rule of law, but on deceptions, fraudulent assertions, deliberate misrepresentations, and criminal conduct of individuals suborned by Defendant Caron during administrative processing of the Plaintiff's EEO discrimination complaints.

Furthermore, the notion that the events surrounding an adverse employment action are not relevant evidence that a plaintiff could use at trial was clearly rejected by this Court and the appeals courts because they may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue. See e.g. *Stewart v. Rutgers, The State Univ.*, 120 F.3d 426, 433 (3d Cir. 1997); *United Air Lines v. Evans*, 431 U.S. 553, 558 (1977).

As established in the petition for a writ of certiorari, the district court abused discretion and ignored direct evidence of discriminatory attitude expressed in the email of the selecting official about "real paucity of employees in the 26 to 36 years age bracket," distress of the selecting official for being above the average age of 44, and "need for fresh ideas and enthusiastic energy of new employees" by wrongly referring to a case which was different from the circumstances of continuous discrimination and retaliations in the current case. The direct evidence of discriminatory attitude because of Petitioners' age and a pattern and practice of age discrimination when Defendant King did not select or promote the most qualified Petitioner to a number of positions, but selected the youngest and the least qualified individuals, were sufficient to defeat summary judgment. In addition to the direct evidence of discriminatory attitude obvious to any reasonable mind, the undisputed evidence of a pattern and practice of age discrimination in a series of denied promotions and assignments to the positions leading to promotion established disparate treatment and created an inference of age discrimination against Petitioner because promotions under the "accretion of duties" were unknown to Petitioner and were

made secretly in violation of the agency own regulations specifically requiring that “[t]he potential for future promotion must be made known to all potential applicants”. An individual plaintiff may “use evidence of a pattern or practice of discrimination to help prove claims of individual discrimination within the McDonnell Douglas framework.” *Lowery v. Circuit City Stores, Inc.*, 158 F.3d at 760-61 (4th Cir. 1998). The appeals court did not address any of the issues raised by Petitioner in the writ of certiorari and, consequently, the petition for a writ of certiorari should be granted.

However, Respondents misrepresented matter in the Respondents’ Opposition with regard to a pattern and practice of age discrimination in a series of secret promotions of younger employees under the pretext of ‘accretion of duties’ by arguing at 7: “Such assertions cannot defeat a properly supported motion for summary judgment” contrary to the evidence showing that Defendants’ motion was based on deliberate misrepresentations and deceptions, similar to what Respondents proffered to this Court. To deceive this Court, Respondents quoted the district court wrong opinion at A12 that petitioner’s “arguments [were] based on his own conspiratorial theories and conclusory leaps in reasoning rather than evidence,” which was irrelevant and immaterial to the issue of a series of secret promotions by ‘accretion of duties’ to conceal a promotion opportunity from Petitioner, but related to “[defendant’s] state of mind and motivation [which] are in dispute”. However, the district court abused discretion and denied jury trial that clearly warrants vacating the appeals court decision and granting the Appellant’s petition for a writ of certiorari.

Furthermore, Petitioner presented direct evidence of conspiracy to escalate discrimination and retaliations against Petitioner when on September 30, 2002, Defendant Jebsen instructed his subordinate Defendant Smith: "It's time to crack down on them [Petitioner and his brother]... Dave Caron has mentioned it twice now" after Defendant Caron informed them on September 27, 2002, that Petitioner "has filed an additional 14 complaints, alleging reprisal" and "alleg[ing] that we deliberately damaged the OCI investigation by delay and by not giving them information that they asked for and by not giving them complete list of promotions." See Ex. 3 at E7-E8. The direct evidence of conspiracy and demonstrably discriminatory motive to retaliate against Petitioner was further supported by the undisputed evidence when Petitioner's supervisor Craun informed Defendant Smith that Petitioner "in fact is getting the work done despite the claim below. He is usually in the office past 6:00 PM so that might explain why he is sending emails in the afternoon." See Ex. 4 at E9-E10.

Nevertheless, Respondents deliberately misrepresented matter in the Respondents' Opposition at 8 to deceive the Court with respect to the September 30, 2002 email "to crack down" on petitioner and his brother: "that the supposed 'crack down' concerned petitioner's excessive use of official government time and resources to work on his multitude of Equal Employment Opportunity (EEO) complaints" and "[t]he alleged 'crack down' was merely the Navy's effort to enforce reasonable restrictions on petitioner's use of official government time" contrary to the direct evidence that Respondents conspired to escalate discrimination

and retaliations against Petitioner for filing EEO discrimination complaints when Petitioner used his own time to work on EEO discrimination complaints, but Defendant Caron maliciously fabricated "concern" for "excessive use of official government time" and conspired with other Defendants to "limit the official time petitioner could spend on his EEO complaints." See Ex. 4 and Ex. 3. Under such circumstances, Respondents' conduct amounts to fraudulent misrepresentations and deliberate deception to the Court in the Respondents' Opposition at 8. As shown above, Respondents continued deceptions and misrepresentations of substituting the direct evidence by "finality as to the claim or demand in controversy" in the first lawsuit to deny Petitioner the direct evidence of the Respondents' conspiracy and demonstrably discriminatory motive to escalate discrimination and retaliations against Petitioner for participation in protected activities in addition to the evidence that the district court decisions were based not on facts and the rule of law, but on deceptions, fraudulent assertions, material misrepresentations, and criminal conduct of individuals suborned by Defendant Caron. Moreover, when only a short period of time separates an aggrieved employee's protected conduct and adverse employment actions, such temporal proximity provides an evidentiary basis from which an inference of retaliation can be drawn. See *Kachmar v. SunGard Data Sys., Inc.*, 109 F.3d 178 (3d Cir. 1997). In this case the appeals court did not address any of the issues raised by Petitioner, but sanctioned erroneous decisions and departure of the lower court from the accepted decisions that call for an exercise of this Court's supervisory power.

Accordingly, the petition for a writ of certiorari should be granted.

The evidence identified in this case showed that the district court abused discretion and far departed from the accepted decisions since “direct evidence would be what [the selecting official] said or did in the specific employment decision in question.” See *Plair v. E.J. Brach & Sons, Inc.*, 105 F.3d 343, 347 (7th Cir. 1997). Respondents, however, continued deliberate misrepresentations and deceptions in the Respondents’ Opposition at 10 contrary to the Petitioner’s writ of certiorari presenting direct evidence of discrimination and retaliations against Petitioner and this Court’s decision that in the “mixed-motive” cases direct evidence of retaliation is sufficient to show that the defendant’s activity was motivated by retaliatory animus. See *Desert Palace Inc. v. Costa*, 539 U.S. 90 (2003). In addition, Petitioner presented direct evidence of the Respondent’s intent to continue intentional discrimination and retaliations against Petitioner and his brother when Defendant Jebsen replied: “I don’t like the sound of mediation; implies we have some grounds for compromise” in response to a request for participation in mediation. Furthermore, an offer of promotion to the Head of Electromagnetic Signatures Department position for Petitioner further evidenced Petitioner’s superior qualifications. See Ex. 5 at E10 and E11. However, the district court abused discretion and far departed from this Court’s findings and specifically that an employee’s claimed superior qualifications for the position sought could show that the employer’s articulated reasons were pretextual. See *Ash v. Tyson Foods, Inc.*, 126 S. Ct. 1195 (2006). The appeals court failed to address the

district court's abuse of discretion and the issues raised by Petitioner; consequently, the petition for the writ of certiorari should be granted.

CONCLUSION

Wherefore, in consideration of the above, Petitioner respectfully submits response to the Respondents' Opposition to the petition for a writ of certiorari for the Court's consideration and decision to grant the petition. Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Date

June 14, 2007

Yuri Stoyanov
Yuri Stoyanov

EXHIBITS

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EXHIBIT 1

Josie,

Please reply by September 25, 2002. Thank you.

Yuri

-Original Message-----

From: Stoyanov Yuri J CRBE
Sent: Friday, September 20, 2002 2:36 PM
To: McGrath Josephine CRBE
Cc: Fowler Mary K (Kathy) CRBE
Subject: RE: Report on the Vacancy
announcements in C/70

Josie,

Please advise me on this matter. Do I have to call the EEOC Administrative Judge for the release of this information or you can request the Code 70 to release this information to me?

Please let me know if you have questions. Thank you.

Yuri Stoyanov
Tel: 301-227-2556

-Original Message-----

From: Fowler Mary K (Kathy) CRBE
Sent: Friday, September 20, 2002 1:02 PM
To: Stoyanov Yuri J CRBE
Subject: RE: Report on the Vacancy
announcements in C/70

Yuri,

It is my understanding that you must request this type
of information from Josie McGrath in the EEO office
since you have ongoing EEO case.

Sorry,
Kathy.

-Original Message-----

From: Fowler Mary K (Kathy) CRBE
Sent: Friday, September 20, 2002 8:52 AM
To: Van Der Veer Susan C CRBE
Subject: RE: announcement

Sue,

I can actually call up the announcement this morning.
Will attach the website.

Kathy

www.donhr.mavy.mil

-Original Message-----

From: Stoyanov Yuri J CRBE
Sent: Tuesday, September 17, 2002 10:36 PM

To: Fowler Mary K (Kathy) CRBE
Subject: Report on the Vacancy announcements in
C/70

Kathy,

Please inform me on the status of vacancy announcements to ND-V position in Code 70 and Code 74 in particular. Please let me know when and if any vacancy announcements for the branch head or other positions have been released since June 2002 to the end of the FY02? Thank you.

Yuri Stoyanov
Tel: 301-227-2556

-Original Message-----

From: Van Der Veer Susan C NSSC
[mailto:VanDerVeerSC@NAVSEA.NAVY.MIL]
Sent: Monday, September 16, 2002 7:39 PM
To: Fowler Mary K (Kathy) CRBE; King
James H CRBE
Subject: announcement

Kathy/Jim:

Are you expecting the 05T position to get announced this week?

Thanks, Sue

EXHIBIT 2

-Original Message-

From: Fowler Mary K (Kathy) CRBE,
Sent: Wednesday, September 25, 2002 2:21 PM
To: Goldman Kenneth R CRBE

Subject: RE: Vacancy announcement

Ken,

This was posted for reasons I can not will not go at this time. [emphasis added]

Funny how Jenkins regularly deletes our emails but managed to see this one on the public folder that most employees don't even look at.

-Original Message-

From: Goldman Kenneth R CRBE
Sent: Wednesday, September 25, 2002 9:15 AM
To: Fowler Mary K (Kathy) CRBE
Subject: RE: Vacancy announcement

Thanks Kathy, I think you are quite competent. Everything you say may be true, but if we don't even go through the motions, folks will complain (and you know who the usual suspects are). Posting it like this may be worst than not doing it at all, and may lead to major whining by those suspects. [emphasis added]

KG

*Ken Goldman
Head, Signatures Characterization & Analysis
Department (Code 7100)
David Taylor Model Basin
aka Naval Surface Warfare Center Carderock Division
W. Bethesda, MD 20817-5700
goldmankr@nswccd.navy.mil
<mailto:goldmankr@nswccd.navy.mil>
301-227-4239 (Voice)
301-227-5425 (Fax)*

202-236-9116 (Cell)

-Original Message-

From: Taylor Dianna J CRBE, On Behalf of Fowler
Mary K (Kathy) CRBE
Sent: Wednesday, September 25, 2002 2:21 PM
To: Goldman Kenneth R CRBE
Subject: RE: Vacancy announcement

Because I'm not as competent as you Ken! This is a name request announcement. Only one person will even be considered. [emphasis added]
K.

-Original Message-

From: Goldman Kenneth R CRBE
Sent: Tuesday, September 24, 2002 6:57 PM
To: Fowler Mary K (Kathy) CRBE
Subject: RE: Vacancy announcement

This doesn't really help folks who may want to apply if it isn't posted until the day it is closed. This is the type of thing our employees complain about. Why wasn't it posted last week when Roslyn sent it to you?
[emphasis added]

KG

*Ken Goldman
Head, Signatures Characterization & Analysis
Department (Code 7100)*

*David Taylor Model Basin
aka Naval Surface Warfare Center Carderock Division
W. Bethesda, MD 20817-5700*

goldmankr@nswccd.navy.mil
<mailto:goldmankr@nswccd.navy.mil>
301-227-4239 (Voice)
301-227-5425 (Fax)
202-236-9116 (Cell)

-Original Message-

From: Taylor Dianna J CRBE On Behalf Of Fowler
Mary K (Kathy) CRBE
Sent: Tuesday, September 24, 2002 8:43 AM
To: Directory 70 - Announcements
Cc: Bowen Ronald J NSSC; Boyd James B Jr. NSSC;
Clark Donald T CRBE; Coughlin Glenn H NSSC;
Cowan Michael N CRBE; Fast Steve J CONT NSSC;
Hyman Martin A NPRI; Jenkins Shawn Q NSSC;
Joseph Vignalli; Karen Beer; Mark McGown; Michael
O'Leary; Pope Marion F NSSC
Subject: Vacancy announcement

From: Johnson Roslynn H CRBE
Sent: Monday, September 16, 2002 6:01 PM
To: announcement

Kathy,

The High grade ND-5 Program Manager for 743 opens
09-17-02 closes 09-24-02
Announcement # CAR-02-0074.

Roslynn

EXHIBIT 3

From: Jebsen Gary M CRBE
Sent: Monday, September 30, 2002 7:07 AM
To: Smith Gerald A CRBE

Subject: FW: EEO Complaints: Stoyanov

It's time to crack down on them vis a vis hours spent on their EEO staff. Dave Caron has mentioned it twice now: What do you recommend? Meeting with Wilson, Shang?

Gary

-Original Message-

From: Caron David M CRBE
Sent: Friday, September 27, 2002 6:40 AM
To: Petri Steven W CAPT CRBE; Jebsen
Gary M CRBE; Fowler Mary K (Kathy) CRBE,
Hagberg Chris L CRBE; Tryon Stephen MS CRBE;
Smith Gerald A CRBE; Tomlin John C CRBE;
Mcgrath Josephine M CRBE; Farley Stephen M
CRBE; Davies John C III CRBE
Subject: EEO Complaint: Stoyanov

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I just wanted to let people to know that Mr. Yuri Stoyanov has filed an additional 14 complaints, alleging reprisal against:

Mr. G. Smith (4 complaints)
Ms. M. Fowler (2 complaints)
Mr. G. Gebsen (3 complaints)
Mr. D. Caron (2 complaints)

Capt. S. Petri (3 complaints)

He alleges that we deliberately damaged the OCI investigation by delay and by not giving them information that they asked for and by not giving them complete list of promotions. The complaints are essentially the same for each of us.

For information sake, we provided all the information that OCI Investigator requested and more. We also provided copies of what was provided to the OCI Investigator to the complainant for his review at least a day before the investigation in accordance with the Investigator's letter. In addition we have no obligation to respond directly to the Complainant in requests that he makes for information (unless of course made under FOIA, or Privacy Act). We advised him that we would provide information directly to Investigator and that he should make requests directly to her if he wanted something included.

With the number of complaints and e-mails they are sending at all hours of the day, I can't believe they are working. The EEO calls for a reasonable amount of time to work on drafting their complaint and I have seen cases that indicate limit it to 8 hours total is reasonable. I would not be surprised to if they spend 8 hours a day on EEO. I would be willing to discuss this with their immediate supervisors and HR if a problem with their completing work is perceived.

In regard to complaints we will deal with it.

Dave.

EXHIBIT 4

From: Craun Matthew A CRBE
Sent: Monday, November 04, 2002 8:52 AM

To: Smith Gerald A CRBE; Shang Paul C
CRBE
Subject: RE: Calibration of Yuri

Jerry,

I spoke with Yuri on Friday and he agreed. I'm following up with an email today. As for Yuri's work, he in fact is getting his work done despite the claim below. He is usually in the office past 6:00 PM so that might explain why he is sending emails in the afternoon.

Matt

-Original Message-

From: Smith Gerald A CRBE
Sent: Thursday, October 31, 2002 1:15 PM
To: Shang Paul C CRBE; Craun Matthew A
CRBE
Subject: FW: Calibration of Yuri

Yuri needs to have some bounds set for him. See me and I will help define the bounds but you need to issue ASAP.

*Jerry Smith
Deputy Head, Signatures Directorate
301-227-1626*

-Original Message-

From: Caron David M CRBE
Sent: Thursday, October 31, 2002 1:12 PM
To: Jebsen Gary M CRBE; Smith Gerald A
CRBE

Subject: Calibration of Yuri

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FYI

I am receiving extremely long nonsensical stuff from him daily (middle of the work day), he must not work. I would suggest that he be given designated hours to work on EEO matters like Alex was. If you would like to see the latest or talk. I will be here tomorrow.

Thanks, Dave

EXHIBIT 5

From: King James H CRBE
Sent: Monday, July 29, 2002 2:42 PM
To: Jebsen Gary M CRBE
Cc: Smith Gerald A CRBE; Davies John C III
CRBE
Subject: RE: STOYANOVS

Gary:

Thanks. I'll let Dave know that you're willing to do it and schedule some time with you and Jerry. I agree that we've got no basis for compromise but, thought that it might be helpful to talk. Dave thought that we might be able to offer something to them.

If you're suggestion with Dr. Lakoudis goes through, you could offer them my position. [emphasis added]

Thanks, Jim

-Original Message-

From: Jebsen Gary M CRBE
Sent: Monday, July 29, 2002 2:02 PM
To: King James H CRBE
Cc: Smith Gerald A CRBE; Davies John C III
CRBE
Subject: RE: STOYANOVS

If a fresh face is warranted, then it probably should be me. Jerry will be construed to be part of the perceived problem. It so happens that I have both of those days available. I would like to sit down with you and Jerry beforehand and review the facts. I don't like the sound of mediation; implies we have some ground for compromise. Don't know what we would concede at this point. [emphasis added]

Gary

-Original Message-

From: King James H CRBE
Sent: Monday, July 29, 2002 2:42 PM
To: Jebsen Gary M CRBE
Cc: Smith Gerald A CRBE; Davies John C III
CRBE
Subject: STOYANOVS

Gary,

You are aware of the issue with the Stoyanovs and my alleged discrimination against them. Dave Caron (Legal) suggested mediation and I agreed to mediation with Aleks on 21 August and Yuri on 22 August. In conversation with Dave, he suggested that we might want to "go one step higher". This would provide a fresh face -- someone when they might feel confident was not out to get them. To me, that would mean you or Jerry. I don't know whether either one of you could take the time, would be interested, or fell up to speed on the issues.

What do you think?

Jim

James H. King

Head, Electromagnetic Signature Department, Code
74

9500 MacArthur Boulevard
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